

1 BILAL A. ESSAYLI
United States Attorney
2 DAVID R. FRIEDMAN
Assistant United States Attorney
3 Chief, Criminal Appeals Section
312 North Spring Street, Suite 1000
4 Los Angeles, California 90012
Ph: (213) 894-7418
5 David.Friedman@usdoj.gov

6 Attorneys for Plaintiff
UNITED STATES OF AMERICA

7 UNITED STATES DISTRICT COURT
8 FOR THE CENTRAL DISTRICT OF CALIFORNIA

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 v.

12 ALEXANDER SMIRNOV,

13 Defendant.
14
15
16
17

No. CR 24-91-ODW

[PROPOSED] AMENDED AND
MODIFIED PROTECTIVE ORDER
REGARDING DISCOVERY
CONTAINING PERSONAL
IDENTIFYING INFORMATION;
PRIVACY ACT INFORMATION;
GRAND JURY INFORMATION; AND
SENSITIVE U.S. GOVERNMENT
INFORMATION

18 The Court has read and considered the Defendant's Unopposed Ex-Parte Motion
19 to Modify the Protective Order that was entered at ECF No. 59, and good cause appearing,
20 hereby enters this Amended and Modified Protective Order, which amends and modifies
21 the Protective Order that was entered at ECF No. 59. Accordingly, the Court Orders as
22 follows:
23

24 1. The government's discovery in this case relates to Defendant's alleged
25 crimes, that is, violations of 18 U.S.C. §§ 1001 (false statements to law enforcement) and
26 1519 (causing a false and fictitious record).

27 2. A protective order is necessary because the government has produced to the
28 defense materials containing third parties' personal identifying information ("PII") and

1 related sensitive information (e.g., private communications, financial information,
2 personal travel records). The Court finds that disclosure of this information without
3 limitation risks the privacy and security of the information's legitimate owners, especially
4 in a case such as this where immense public interest and media attention are present, and
5 where those third parties include potential trial witnesses. Because the government has
6 an ongoing obligation to protect third parties' PII, the government cannot produce to
7 Defendant an unredacted set of discovery containing this information without the Court
8 entering the Protective Order. Moreover, PII and related sensitive information make up
9 a significant part of the discovery in this case, and such information itself, in many
10 instances, has evidentiary value. If the government were to attempt to redact all this
11 information in strict compliance with Federal Rule of Criminal Procedure 49.1, the
12 Central District of California's Local Rules regarding redaction, and the Privacy Policy
13 of the United States Judicial Conference, the defense would receive a set of discovery
14 that could be confusing and difficult to understand, and it could be challenging for
15 defense counsel to adequately evaluate the case, provide advice to Defendant, or for
16 further proceedings.

17 3. An order is also necessary because the government has produced to the
18 defense materials that may contain information within the scope of the Privacy Act, 5
19 U.S.C. § 552a. The Court finds, to the extent that these materials contain Privacy Act
20 information, disclosure is authorized pursuant to 5 U.S.C. § 552a(b)(11).

21 4. An order is also appropriate because the government has produced to the
22 defense materials related to a grand jury investigation, with such materials being
23 governed by the restrictions set forth in Federal Rule of Criminal Procedure 6(e). *See,*
24 *e.g., Douglas Oil v. Petrol Stops Nw.*, 441 U.S. 211, 218, 219-22 (1979) (discussing
25 policies underlying grand jury secrecy requirements and noting that they remain in effect
26 after grand jury's proceedings conclude).

1 5. Finally, an order is necessary because the government has produced
2 sensitive U.S. government information, including information about confidential human
3 source operations and other ongoing investigations.

4 6. The information described in Paragraphs 2 through 5 shall collectively be
5 referred to as “Confidential Discovery.”

6 7. The purpose of the Protective Order is to (a) allow the government to
7 comply with its discovery obligations while protecting this sensitive information from
8 unauthorized dissemination, and (b) provide the defense with sufficient information in a
9 timely manner to adequately represent Defendant.

10 8. Accordingly, the discovery that the government has provided to defense
11 counsel in the above-captioned case will be subject to this Protective Order, as follows:

12 a. As used herein, “Defense Team” includes (1) Defendant’s counsel of
13 record (“defense counsel”); (2) other attorneys at defense counsel’s law firm who may be
14 consulted regarding case strategy in this case; (3) defense investigators who are assisting
15 defense counsel with this case; (4) retained experts or potential experts; (5) paralegals,
16 legal assistants, and other support staff to defense counsel who are providing assistance
17 on this case; and (6) vendors utilized by defense counsel for purposes of processing,
18 organizing, and/or printing discovery. The Defense Team does not include Defendant,
19 Defendant’s family members, or any other associates of Defendant.

20 b. Any and all discovery materials the government produced to
21 Defendant and his attorneys of record in discovery that are designated as Confidential
22 Discovery material shall be reviewed by only the Defense Team, with officials in the
23 Executive Branch provided that counsel for the Government consents to the disclosure,
24 and other individuals or entities as provided in this Order, as has been agreed by the
25 parties, or as further ordered by the Court. No Confidential Discovery material or copies
26 of any Confidential Discovery material, nor the contents of any Confidential Discovery
27 material, shall be provided to any individual or entity except as provided in this Order, as
28 has been agreed by the parties, or as further ordered by the Court.

1 c. The Defense Team and any other individual or entity as permitted
2 herein shall use Confidential Discovery material and its contents solely for the
3 preparation, trial, direct appeal (if any), collateral attack (if any) of this case, and can
4 share said Confidential Discovery with officials in the Executive Branch provided that
5 counsel for the Government consents to the disclosure, and for no other purpose
6 whatsoever. No additional copies of any Confidential Discovery material shall be made
7 except as necessary for those purposes. With the exception of sharing Confidential
8 Discovery with the Executive Branch, before first disclosing Confidential Discovery
9 material or its contents to any member of the Defense Team (except for those employed
10 by defense counsel's law firm), or any other individual or entity as permitted herein,
11 defense counsel must give to that individual or entity a copy of this Order and maintain
12 a copy signed and dated by the individual or a representative of the entity until such time
13 as all appeals in this matter (if any) are concluded. The Defense Team shall not permit
14 anyone other than members of the Defense Team or the Executive Branch to have
15 possession of Confidential Discovery material, including Defendant, while outside the
16 presence of the Defense Team.

17 d. The Defense Team may review Confidential Discovery material with
18 a witness or potential witness in this case, including Defendant, so long as a Defense
19 Team member is present if the discovery material is being shown. Before being shown
20 any portion of the Confidential Discovery material, however, any witness or potential
21 witness must be informed of, and expressly agree, without qualification, to be bound by
22 the requirements of this Order, whose terms shall be communicated to that person by a
23 Defense Team member who is present, in accordance with the requirements set forth
24 above in subparagraph c. As to the Defendant, he was previously advised of the content
25 of ECF 59 which satisfies this requirement. No witness or potential witness may retain
26 any Confidential Discovery material, or any copy thereof, after his or her review of those
27 materials with a Defense Team member is complete, including any notes generated from
28 those materials. Notwithstanding the foregoing, this provision will not apply to notes

1 taken by Defendant while consulting with his counsel of record in preparation for his
2 defense (but see subparagraph k, designating such notes as Confidential Discovery
3 material).

4 e. The parties shall comply with Federal Rule of Criminal Procedure
5 49.1 with respect to the public filing or use of any Confidential Discovery material
6 containing PII or other sensitive information, including: (1) Social Security numbers, (2)
7 names of minor children, (3) dates of birth, and (4) financial account numbers. *See* Fed.
8 R. Crim. P. 49.1. The parties also shall apply the requirements of Rule 49.1 when
9 showing any Confidential Discovery material containing PII or other sensitive
10 information to any third party. In addition, public references to any names of potential
11 witnesses in this case, including but not limited to unsealed court filings and open
12 proceedings, shall be sufficiently anonymized or redacted as to properly safeguard the
13 privacy and security interests of those potential witnesses. The parties will confer with
14 one another before publicly referencing a potential witness, whether in a public filing or
15 otherwise, to ensure there is no objection to the potential witness reference; should the
16 parties be unable to reach an agreement, they will present the issue to this Court for
17 resolution.

18 f. Should Defendant, the Defense Team, or any of the other individuals
19 or entities referenced herein find any material inadvertently produced by the government
20 that is marked as classified, they shall immediately double-seal the material and all copies
21 of the material, inform the government of such inadvertent disclosure, and make
22 arrangements for the secure return of such material to the government.

23 g. At the request of the government, Defendant, the Defense Team, and
24 any other individuals or entities referenced herein shall return all copies of material that
25 was inadvertently produced in discovery.

26 h. Within 60 days following the conclusion of these proceedings, or any
27 direct appeal (if any) from or collateral attack (if any) upon these proceedings, the
28 Confidential Discovery material disclosed by the government and any duplicates made

1 for the preparation, trial, direct appeal (if any), or collateral attack (if any) of this case
2 shall be returned to the government or destroyed by the Defense Team, unless the Court
3 (or government) gives specific written permission for an exception to this requirement.

4 i. This Order applies to any and all individuals to whom the Defense
5 Team or any other individual or entity referenced herein, pursuant to this Order, shows
6 or discloses the contents or substance of any Confidential Discovery material produced
7 to them by the government, but not to the Executive Branch. By signing and dating a
8 copy of this Order, as set forth above, any person or entity that receives copies of any
9 Confidential Discovery material produced, or to whom the contents of such material is
10 otherwise disclosed, with the exception of the Executive Branch, submits himself, herself,
11 or itself to the jurisdiction of this Court for all purposes, including sanctions or contempt
12 for violation of this Order.

13 j. The Defense Team shall maintain the Confidential Discovery material
14 safely and securely, and shall exercise reasonable care in ensuring the confidentiality of
15 those materials by (1) not permitting anyone other than those individuals or entities
16 referenced herein to access the Confidential Discovery material subject to the restrictions
17 set forth herein; (2) not divulging to anyone other the individuals or entities referenced
18 herein the contents of the Confidential Discovery material; and (3) except as otherwise
19 provided herein, not permitting the Confidential Discovery material to be outside the
20 offices, homes, vehicles, or personal presence of the Defense Team.

21 k. With the exception of the Executive Branch, to the extent that
22 Defendant, the Defense Team, witnesses or potential witnesses, or any other individual
23 or entity as permitted herein, creates notes that contain, in whole or in part, information
24 memorialized in the Confidential Discovery material, or to the extent that copies are made
25 for authorized use by the Defense Team, such notes, copies, or reproductions become
26 Confidential Discovery material subject to this Order and must be handled in accordance
27 with the terms of this Order; however, as it applies to subparagraph h above, said notes,
28

1 copies, or reproductions will be destroyed and do not have to be provided to government
2 counsel.

3 l. In the event there is a substitution of counsel prior to when such
4 documents must be returned, new defense counsel must be informed of, and agree in
5 writing to be bound by, the requirements of this Order before the undersigned defense
6 counsel transfers any Confidential Discovery material to the new defense counsel. New
7 defense counsel's written agreement to be bound by the terms of this Order must be
8 returned to counsel for the government assigned to the case. New defense counsel then
9 will become the Defense Team's custodian of materials designated subject to this Order
10 and shall then become responsible, upon the conclusion of appellate and post-conviction
11 proceedings, for returning the Confidential Discovery material to the government or
12 destroying them in accordance with this Order.

13 m. With the exception of the Executive Branch, Defense counsel shall
14 advise Defendant and all members of the Defense Team, as well as any of the other
15 individuals and entities referenced herein, of their obligations under this Order and ensure
16 their agreement to follow this Order, prior to providing Defendant, members of the
17 Defense Team, or any others as permitted herein with access to any materials subject to
18 this Order. Notwithstanding the foregoing, this Order does not require Defense counsel
19 to secure new signatures acknowledging the terms of this Order for discovery previously
20 shared by Defense counsel and/or the Defense team under the terms of ECF 59.

21 IT IS SO ORDERED.

22
23 _____
24 DATE

23 _____
24 HONORABLE OTIS D. WRIGHT II
25 UNITED STATES DISTRICT JUDGE
26
27
28